

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re L.S. et al., Persons Coming
Under the Juvenile Court Law.

B301971

(L.A. County Super. Ct.
No. 19CCJP01430A-B)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

LUIS S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Jana M. Seng, Judge. Affirmed.

Landon Villavaso, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Plaintiff and Respondent.

In this dependency appeal, the juvenile court sustained allegations that minors A.S. and L.S. had been sexually abused years earlier by their paternal grandfather, Arturo S. (Grandfather). The court declared the children dependents of the juvenile court and, immediately thereafter, terminated jurisdiction based on a finding that Grandfather no longer lived with the family and there were no beneficial services the court could order that the minors would participate in willingly. We consider whether to reverse the juvenile court's declaration of the minors as dependents of the juvenile court even though Father contests neither the court's jurisdiction findings nor the order terminating jurisdiction.

I. BACKGROUND

A. *Referral and Investigation*

Luis S. (Father) and A.R. (Mother) have three children: a 14-year-old son, A.S., a 17-year-old daughter, L.S., and an adult son who is not a party to this appeal. When the Los Angeles County Department of Children and Family Services (the Department) received a referral alleging Father punched and choked A.S. in February 2019, the family was sharing a home with Grandfather and other extended family on Father's side.

Father, Mother, A.S., L.S., and the adult sibling all discussed the incident precipitating the referral with a Department social worker. They variously described Father as having slapped or punched A.S., but the focus of the investigation changed when L.S. disclosed Grandfather sexually abused her when she was seven or eight years old. L.S. revealed Grandfather touched her vagina over her clothing more than 15 times and she told the social worker that the touching stopped

when she disclosed the abuse to Mother and Father. The social worker called the police and was present for follow-up interviews with the family the same day.

L.S. told the police that when she was seven or eight years old, Grandfather would ask her to help him make his bed and “hump” her with his clothes on. Grandfather would also touch her vagina over her clothing, and on one occasion “inserted his fingers inside her vagina.” A.S. initially told the social worker he was not sexually abused, but he told the police that Grandfather “went inside of him” with his penis about three times over a two-month period when A.S. was seven or eight years old. When asked whether Mother knew about the abuse, A.S. answered, “not exactly.”

Mother acknowledged that, about seven years earlier, A.S. told her Grandfather touched him inappropriately. Grandfather denied the allegation when Mother spoke to him, but she no longer let him care for the children. Mother said she was not aware of L.S. or anyone else alleging sexual abuse by Grandfather. Father said he did not believe Grandfather had sexually abused the minors.

For several days following the Department’s initial contact with the family, Mother kept social workers apprised of her efforts to arrange for the children to live apart from Grandfather. After Mother reported Grandfather had moved out and she did not know where he was staying, a Department social worker inspected the home and found medicine and clothing belonging to Grandfather. Mother explained this was “extra” medicine and Grandfather did not take all of his clothing because he and Father were arguing when he left.

The Department deemed the allegation of physical abuse inconclusive, but filed a dependency petition alleging A.S. and L.S. were subject to the juvenile court's jurisdiction under Welfare and Institutions Code section 300, subdivisions (b), (d), and (j) based on the reported sexual abuse.¹ At the detention hearing, the juvenile court found the Department had made a prima facie showing supporting dependency jurisdiction but determined there were reasonable services available to prevent detention and released the children to the home of Mother and Father.

Prior to the combined jurisdiction and disposition hearing, A.S. and L.S. participated in forensic interviews. A.S. initially said he could not recall being sexually abused, but then said Grandfather raped him. A.S. disclosed the abuse to Mother a few years later, and she asked him whether he wanted her to contact the police and he said no. A.S. also questioned the purpose of the forensic interview, asking, "What if we just don't care about it, what if we're just over it? Do you guys think that we're not ok?"

L.S. said Grandfather "hump[ed]" her on multiple occasions when she was between five and seven years old. She did not mention digital penetration. When the interviewer pointed this out and asked whether she had been truthful when speaking to the police, L.S. said yes but she could not recall everything she told the police. L.S. reported the abuse to Mother "[a] long time ago" and believed Mother had an "instinct" that something was wrong. The abuse stopped after L.S. spoke to Mother, and she claimed she "outgrew" it. L.S. told the interviewer that she

¹ Undesignated statutory references that follow are to the Welfare and Institutions Code.

remembered A.S. crying and Mother later telling L.S. that “what happened to [L.S.] happened to [A.S.]”

In subsequent interviews with a Department social worker, Mother said she believed the sexual abuse allegations but denied the children had previously told her about the abuse. She acknowledged A.S. “mentioned something,” but said it “wasn’t something concrete . . . that made [her] think, ‘I have to pay attention.’” She was aware that Grandfather was previously accused “of the same thing” by other family members, but did not believe he was convicted.² The Department was unable to reach Father for another interview, but the forensic interviewer reported he told her “whatever happened, happened a while ago and [the children are] not in victim mode.”

In a last minute information report submitted prior to the jurisdiction and disposition hearing, the Department reported the children had been assessed for mental health services. Services were not medically necessary for L.S., and although A.S. would benefit from services, he refused them.

B. Jurisdiction and Disposition

At the combined jurisdiction and disposition hearing, the attorney for the minors asked the juvenile court to dismiss the section 300, subdivision (b) and (j) counts and to sustain the section 300, subdivision (d) counts.³ Father and Mother joined

² In 2004, two of Grandfather’s other grandchildren told police he sexually abused them. Grandfather was convicted of two counts of willful cruelty to a child (Pen. Code, § 273a) in 2007.

³ Section 300, subdivision (d) provides that a child is within the jurisdiction of the juvenile court when “[t]he child has been

minors' counsel's request to dismiss the subdivision (b) and (j) counts and argued the juvenile court should dismiss the subdivision (d) counts under section 390, a statute that allows juvenile courts to "dismiss the petition or . . . set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require the dismissal, and that the parent or guardian of the minor is not in need of treatment or rehabilitation."

The juvenile court sustained the section 300, subdivision (d) counts, finding "the statements of the children to the social worker, to the police, and in their forensic interview" were sufficient evidence to support the sexual abuse allegations. The juvenile court dismissed the subdivision (b) and (j) counts because the Department failed to produce sufficient evidence to establish a substantial risk that the children would suffer serious harm "given the remoteness in the time of these incidents and given that Mother had reported the incident to the police and ensured that the children were not left alone."⁴

At the disposition stage of the hearing, minors' counsel, joined by counsel for Father and Mother, asked the court to terminate jurisdiction because the sexual abuse was remote in

sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse."

⁴ It is not clear which incident the juvenile court believed Mother reported to the police.

time, Grandfather no longer lived with the family, and A.S. and L.S. both felt safe at home. The Department objected and asked the juvenile court to keep the case open.

The juvenile court declared the children dependents of the court and immediately terminated jurisdiction: “The court will declare the children dependents of the court under [section 300] and terminate jurisdiction finding that there are no services at this point in time in which would benefit the children or that they would be willingly wanting to participate and that the father—the paternal grandfather is no longer living in the home. [¶] So based upon that, I find that conditions that would justify initial assumption of jurisdiction under section 300 no longer exist, are not likely to exist if supervision is withdrawn[,] continued supervision of the children is no longer necessary, and jurisdiction is hereby terminated. [¶] The children are living with the mother and father currently, so there doesn’t need to be any family law order in place.”

II. DISCUSSION

Father’s only argument on appeal is that the juvenile court’s decision to “momentarily” declare the children dependents of the juvenile court was error because the juvenile court immediately thereafter concluded continued jurisdiction was not necessary. This procedural posture in which the case reaches us, though perhaps awkward to a degree, is not unprecedented. (See, e.g., *In re Destiny D.* (2017) 15 Cal.App.5th 197, 206 [rejecting the contention that, after a juvenile court declared a child a dependent under section 360, subdivision (d), the court could not terminate jurisdiction without first setting a review hearing under section 364].) But, as we will explain, the important

consideration for resolving this appeal is prejudice—or the lack of it. Father identifies no non-speculative reason to believe the declaration of dependency alone prejudices him. Because that declaration is all he challenges, we shall affirm.

“Once the juvenile court finds jurisdiction under section 300, it must adjudicate the child a dependent unless the severity of the case warrants nothing more than [the relevant child welfare agency’s] supervision of family maintenance services.” (*In re N.M.* (2011) 197 Cal.App.4th 159, 171.) Father believes the juvenile court’s decision to terminate jurisdiction immediately after adjudicating A.S. and L.S. dependents demonstrates “there was no prudent or sensible reason to declare the minor[]s dependents because [they] were not at risk of harm and the issues of removal and services were not in contention.” But Father does not contend the juvenile court erred in finding A.S. and L.S. were children described by section 300, nor does he challenge the juvenile court’s order terminating jurisdiction over the children (indeed, he asked the juvenile court to make that termination order). So all that is before us to decide is the court’s decision to declare the children dependents.

Father’s argument for how that declaration prejudices him comes in a single paragraph of his opening brief. He writes: “The juvenile court’s abuse of discretion resulted in a miscarriage of justice to [Father]. A declaration of dependency regarding the minors could have negative implications on [Father] in future dependency proceedings, immigration proceedings, or employment opportunities working with children. In addition, it creates a record of the proceedings that does not accurately reflect the juvenile court[’]s reasoning in that its declaration of dependency appears to be in conflict with its factual basis in

support of terminating jurisdiction.” This is insufficient. The conclusory assertions of possible future detriment (“could have negative implications”) are too speculative to support a finding of prejudice warranting reversal. (See *In re N.S.* (2016) 245 Cal.App.4th 53, 62; *In re I.A.* (2011) 201 Cal.App.4th 1484, 1494-1495 [“Although raising the specter of a future impact, Father, too, fails to suggest any way in which this finding actually could affect a future dependency or family law proceeding . . .”].) Moreover, we fail to see how Father could be prejudiced by the declaration of dependency alone (at least as on the grounds he advances to attack that declaration) when the juvenile court’s jurisdiction findings would stand—because they are unchallenged—even if that declaration were reversed. The bottom line is that Father has not shown the requisite prejudice to warrant reversal. (*In re Celine R.* (2003) 31 Cal.4th 45, 59-60 [reversal unwarranted unless there has been a miscarriage of justice].)

DISPOSITION

The juvenile court's order adjudicating the children dependents of the juvenile court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

RUBIN, P. J.

KIM, J.